vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.121 OF 2002

Bhanudas Narayan Shirke
residing at Village Kharvai
Tal.: Khalapur, Dist.: Raigad ... Appellant

V/s.

The State of Maharashtra
(through Shri Baban Raghunath
More, adult, residing at Village
Chinchavali Shekan,
Tal.: Khalapur, Dist.: Raigad ... Respondent

Mr.Ganesh Gole for Appellant
Mr.D.R. More, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 13, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The Appellant challenges his conviction under section 302 of the Indian Penal Code and the sentence imposed on him of life imprisonment and fine of Rs.1000/-. The incident has occurred during the festivities on the Ganapati immersion day in Khalapur, in 1997. An altercation took place between the deceased Ashok and the appellant. This was because the deceased spattered the appellant with coloured powder. The appellant and his colleagues were infuriarated and threatened the deceased with dire consequences. The deceased had thereafter requested the appellant and his friends to forgive him and to forget the matter.

However, the appellant and his friends neither forgave the deceased nor forgot the incident and killed him on 12.9.1997 near the railway station. The appellant and two others who are arrested were arraigned before the Sessions Court, Raigad. The prosecution having proved its case, against the appellant, the trial Judge has convicted him and sentenced him to life imprisonment. The accused No.2 was acquitted and the accused No.3 was convicted for having committed an offence punishable under section 323 of the Indian Penal Code. He was released on executing a bond under section 4 of the Probation of Offenders Act.

2. The appellant who was accused No.1 has preferred the present appeal.

3. We have scrutinised the entire evidence on record and find that the conviction under section 302 of the Indian Penal Code cannot be sustained.

4. The prosecution has examined eight witnesses, four of whom are eye witnesses. PW1, PW4, PW5 and PW6 had seen the deceased sitting on a heap of gravel near the platform of the railway station with the complainant More. The train entered the station and the deceased started proceeding towards the railway track. The appellant followed the deceased with the other accused and assaulted him with fist blows and kicks. The

deceased collapsed to the ground when the appellant took out a knife from his pocket and stabbed him. The appellant stabbed him in the abdomen, chest and head. PW4 has spoken about the presence of PW1, PW5 and PW6 at the place of the incident. The evidence of these witnesses is believable and indicates that it was the appellant who inflicted the fatal blows on the deceased. PW4 has narrated the reason for the grudge that the appellant had against the deceased. In such circumstances, we are inclined to accept the testimony of the eye witnesses

5. This ocular evidence is supported by the medical evidence on record. The Doctor who has been examined as PW8 has described the injuries sustained by the deceased thus:

1) Stab wound left hpochondrid region
5cm X 2 cm. oval.

2) Stab injury on left sicle abdomen
5cm X 2 cm.

3) Stab would lower side at the level of the intercostal space 6cm X 3cm. oblique

4) Stab wound on chest left side at the level on 3 costal space 8 cm X 4 cm vertical

5) Incised wound left forehead
4 cm X 3 cm. vertical

The Doctor has opined that the injury described at No.3 is sufficient to cause death, instantaneously. The Doctor has also opined that the injuries inflicted on the deceased could have been caused by the knife recovered at the instance of the appellant.

6. PW2 is the panch witness to the recovery of the knife at the instance of the appellant. He has proved the recovery of the knife which was made in his presence.

7. On a perusal of the entire evidence on record, we find that the injury inflicted on the deceased obviously can be attributed to the appellant. The intention and motive to cause the death of the deceased has not been proved by the prosecution in the present case. In such circumstances, we are not inclined to accept the finding of the trial Judge that the appellant has committed a murder. There is no doubt that the appellant has committed a culpable homicide but it does not amount to murder. We are of the view that the Appellant certainly intended to cause a bodily injury which was likely to result in the death of the victim. The appellant deserves to be convicted under section 304

Part I and sentenced to 10 years imprisonment.

8. Hence, the appeal is partly allowed. The conviction and sentence under section 302 of the Indian Penal Code is set aside. The appellant is instead convicted under section 304 Part I of the Indian Penal Code and sentenced to suffer rigorous imprisonment of 10 years.

8. Appeal partly allowed.